

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 180 507
Issued to: GARY NAEL DITMARS

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES OF COAST GUARD

2354

GARY NAEL DITMARS

This appeal has been taken in accordance with 46 U.S.C. 239(g) 46 CFR 5.30-1 and 46 CFR 5.30-15.

By order dated 26 May 1983, an Administrative Law Judge of the United States Coast Guard, at Miami, Florida, revoked Appellant's seaman's license upon finding proved the charge of conviction for a narcotic drug law violation. The specification found proved alleges that being the holder of the license above captioned, on or about 23 December 1982 Appellant was convicted of knowingly, intentionally, and unlawfully possessing a controlled substance, to wit, marijuana.

The hearing was held at Miami, Florida on 26 May 1983.

At the hearing, Appellant represented himself and entered a plea of guilty to the charge and specification.

The Investigation Officer introduced in evidence five documents including a copy of the judgement of conviction of the New Jersey Superior Court, Mercer County, in the case State of New Jersey v. Gary Neal Ditmars, and a true copy of the indictment filed in the same ease.

In defense, Appellant offered to exhibits and his own testimony.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved by plea. He then served a written order on Appellant revoking license No. 180507.

The complete Decision and Order was served on 7 June 1983. Appellant filed a timely notice of appeal and a request for a temporary license on 26 May 1983. The Administrative Law Judge denied the request for a temporary license by his order of 2 June 1983. On 7 July 1983 Appellant appealed from the denial of the temporary license and on 8 September 1983 perfected his appeal on the merits.

Both the appeal from denial of the temporary license and the appeal on the merits are treated in this decision.

FINDINGS OF FACT

On 23 December 1982 Appellant pleaded guilty to, and was convicted for, unlawfully possessing a controlled substance with intent to distribute by the New Jersey Superior Court for Mercer County. Appellant was fined \$750 and put on probation for a period of 18 months. In his sworn statement at the hearing, Appellant stated that the conviction involved 173 pounds of marijuana.

At the time of the incident, Appellant was a resident of Miami and wished to return to New Jersey to visit his relatives. He was offered \$1,2000 to deliver an automobile containing the marijuana, presumably to a location in or near New Jersey. He considered this an opportunity to see his family and accepted. Once he delivered the car he was to have no further involvement with- the marijuana. While driving through New Jersey on 12 May 1982 he was stopped by the police for a possible traffic offense, and the marijuana was discovered. He was arrested and ultimately convicted.

Appellant is 29 years old. He is a certified diver and has recently purchased a twenty foot boat which he hopes to use in the diving business. At the time of hearing he had about six years experience with boats. Appellant's Coast Guard record shows no previous offenses and there is no evidence in the record of previous criminal convictions. During the course of these proceeding he was cooperative with both the state and the Coast Guard authorities. A brief letter from his parole officer states that he is faithfully complying with all of the conditions of his probation and has a positive attitude. A second brief letter from an attorney in Fort Lauderdale, Florida states that he has known Appellant for the past six years and considers him an honorable individual, considerate of others, industrious, and hard working.

BASIS OF APPEAL

This appeal is taken from the order imposed by Administrative Law Judge on 26 May 1983 and from the order denying the temporary license on 2 June 1983. Appellant urges that he is worthy of a second chance and wants an opportunity to prove himself. He states that he acted without considering the seriousness of what he was doing.

APPEARANCE: Appellant pro se

OPINION

To the extent that Appellant urges that his license should not be revoked, I do not agree.

Appellant accepted a substantial sum of money, \$1,000, in return for smuggling a large amount of marijuana, 173 from Florida to New Jersey. This a serious offense. At 29 years of age Appellant should have realized this.

The goal of the statute controlling this proceeding, 46 U.S.C. 239(b), is to remove drug traffickers from the merchant marine. Although, under 46 U.S.C. 239(B) I have discretion to revoke or not to revoke a license or document following a narcotic drug conviction, in most cases revocation is appropriate. See Appeal Decisions 2330 (STRUDWICK) and 2303 (HODGMAN). Where as here, the Appellant has been involved in smuggling a substantial quantity of drugs, do not believe it consistent with the intent of the statute that he be allowed to hold a license which will place him in control of a vessel. Such a license and the maritime employment which would be expected to accompany it provide many opportunities to engage in smuggling. One who is inclined to do so presents a special hazard if he possesses a license. Consequently the order of the Administrative Law Judge will not be disturbed.

To the extent that Appellant urges that he should be allowed to make early application to the clemency board under 46 CFR 5.13 for a new license, I also do not agree.

Appellant urges that he is normally a law abiding person, realizes that he has made a mistake, and should be considered rehabilitated. These, of course, are appropriate considerations in connection with an application for clemency under 46 CFR 5.13. However, Appellant's offense is not only very serious, it is also relatively recent. The record shows that he was convicted in December of 1982, for an offense committed in May 1982. I believe it appropriate that he establish his good character over a longer period of time before he is again entrusted with a license allowing him to operate a vessel. The regulations, in 46 CFR 5.13, provide for a 3 year waiting period following revocation before a new license may be applied for. This will provide a more adequate period of time to observe Appellant and for him to establish that he is, indeed, rehabilitated. I find nothing in the record to convince me that this time period should be shortened.

CONCLUSION

There is substantial evidence of a reliable and probative character to support the findings of the Administrative Law Judge. The hearing was conducted in accordance with the requirements of applicable regulations. Revocation is appropriate under the

circumstances of this case. Appellant may apply for a new license after the appropriate period of time as set forth in 46 CFR 5.13

Disposition of the appeal on the merits renders the appeal from denial of the temporary license moot.

ORDER

The order of the Administrative Law Judge, dated at Miami, Florida, on 26 May 1983, is AFFIRMED.

J.S. GRACEY
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 5th day of June 1984.